

CONDUCT AND DISCIPLINE

1. **PURPOSE.** This Order prescribes policies governing employee conduct and corrective disciplinary actions in the Environmental Protection Agency.
2. **REFERENCES.**
 - a. Federal Personnel Manual, Chapter 751, "Discipline".
 - b. EPA order 3120.3A, dated March 18, 1980, "Employee Alcoholism and Drug Abuse Program".
 - c. FPM Letter 751-2, dated February 4, 1983, "Taking Action on the Problem Employee".
 - d. FPM 751-3, dated October 6, 1983, Suggested Table of Actions or Correcting Employee Misconduct".
 - e. EPA order 3110.6B, dated July 29, 198 5, "Adverse Actions".
3. **GENERAL.** The Environmental Protection Agency requires all its employees to adhere to the Agency Regulations on Employee Responsibilities and Conduct (40 CFR, Part 3) and to maintain levels of behavior and efficiency which conform to the highest ethical standards and promoted the interest of EPA and the Federal Service. Likewise, all managers and supervisors are responsible for maintaining a climate of constructive discipline within their organizations by good example and practice, clear instruction, fair and equal treatment of all employees, and firm and decisive leadership.
4. **POLICY.** It is EPA policy that primary emphasis be placed on preventing situations requiring disciplinary actions through effective employee-management relations and that when work performance and/or conduct are not maintained at acceptable levels, constructive corrective action be taken by responsible supervisors on a timely basis.
5. **DETERMINING CORRECTIVE ACTION TO BE TAKEN.** All EPA supervisors and management officials are responsible for taking appropriate corrective actions for which they have been delegated authority and for recommending to higher level officials disciplinary action considered appropriate in other cases. Any supervisor or management official with supervisory duties may take informal corrective actions (paragraph 6 below) and issue official written reprimands (subparagraph 7a below) unless these authorities have been specifically withheld. The following principles will be observed in the exercise of both formal and informal corrective actions:

- a. The action taken must be consistent with the precept of like penalties for like offenses, with mitigating or aggravating circumstances taken into consideration. The action taken should be fair and equitable; and if a penalty is warranted, it should be no more severe than sound judgment indicates is required to correct the situation and maintain discipline. The Appendix to this Order should serve as a guide to appropriate actions for most offenses.
 - b. No action may be taken against an employee on any basis prohibited by 5 U.S.C. 2302, "Prohibited Personnel Practices".
6. INFORMAL CORRECTIVE ACTIONS. When a supervisor decides that corrective action is necessary, he or she should first consider informal measures which are non-punitive in nature but which will adequately instruct offending employees and remedy problem situations. Supervisors are urged to review the facts of individual cases and consider one or more of the following informal measures before formal corrective actions, which are recorded in an employee's official personnel folder, are used.
- a. Closer Supervision. The correction of employee misconduct may require nothing more than closer supervision. The supervisor should inform the employee of the reason for the closer supervision and encourage the employee to cooperate to remedy the problem.
 - b. Oral Admonishment. The most common corrective action is usually the face-to-face session between employee and supervisor. Such discussions should be conducted in private to avoid undue embarrassment to the employee. The tone should be informal and relaxed. The supervisor should advise the employee of the specific infraction or breach of conduct and encourage the employee to explain his or her side of the matter or offer any comment he or she wishes to make. After listening to the employee, the supervisor must decide if he or she should continue. If still warranted, the supervisor should administer the admonishment and outline what steps he or she feels are necessary to preclude its recurrence.
 - c. Written Warnings. A written warning should describe exactly what improper actions the employee is engaging in, outline positive corrective steps and state what penalty might result if the actions continue. A copy of the written warning is not placed in the employee's official personnel folder, but a copy should be retained in the supervisor's personal files. Written warnings are often effective in influencing those employees who require a tangible expression of a supervisor's views. This kind of corrective action lacks the give and take of the oral interview and should usually be employed only if the supervisor has already tried an oral warning or feels that it would be inappropriate.

7. FORMAL DISCIPLINARY ACTIONS. A formal disciplinary action may be an official written reprimand, a suspension, a change to a lower grade, or removal from the civil service. Records of formal disciplinary actions become a part of the employee's official personnel folder. Supervisors should initiate such actions only after coordinating any proposed action with their servicing Personnel Offices. Detailed information concerning formal disciplinary actions is contained in the paragraphs below.
- a. Official Written Reprimand. An official written reprimand is a letter or memorandum issued to an employee by an authorized supervisor or management official to correct an employee's conduct, attitude, work habits, or other factors which have a relationship to his or her employment, and to maintain the efficiency, discipline, and morale of the work force. It is filed in the employee's official personnel folder for a period of up to two years. This type of disciplinary action may be used for a situation or offense which is (1) serious and warrants more than an informal measure, or (2) in the case of repeated infractions of a minor nature. (It should not be confused with the written warning discussed in subparagraph 6c above.) Before issuing an official reprimand, the supervisor must fully discuss the incident with the employee to permit the employee to present his or her side of the situation. If after the employee presents his or her views, the supervisor considers a reprimand to be warranted, the supervisor should prepare the written reprimand in accordance with subparagraph 7a (1) below. (See sample in Figure 1.)
- (1) Contents. The following information shall be incorporated in the body of an official reprimand:
- (a) A description of the facts in sufficient detail to assure that the employee will fully understand the violation, infraction, misconduct, or other action or omission for which he or she is being reprimanded. The supervisor should include in the reprimand specifics as to times, places, dates, and events, and refer to the discussion mentioned in subparagraph 7a above.
 - (b) A statement that the document is an official reprimand and that it will be made a matter of record and filed in the employee's official personnel folder for a period not to exceed two years.
 - (c) A restatement of any former incidents if the reprimand is a follow-up of previous offenses and the action is a continuation of constructive discipline. If the employee failed to take any remedial action previously stipulated, that fact should also be included.

- (d) A warning that any future similar occurrence or other misconduct may result in more severe disciplinary measures.
 - (e) Assistance which is available to the employee for remedial purposes or as a means of helping him or her overcome the deficiency and avoid future recurrence, and any action required of him or her.
 - (f) A statement that the employee may file a grievance under the Agency's Administrative Grievance System contained in EPA Order 3110.8 or under an applicable negotiated grievance procedure, whichever applies.
 - (2) Placement and Retention of Reprimand in Official Personnel Folder. The supervisor shall retain a copy of the reprimand and forward one copy to the servicing Personnel office for filing in the employee's official personnel folder. If decided later through the grievance procedure that the reprimand is not warranted, the reprimand must be withdrawn by the Personnel Office from the personnel folder and the employee notified by the Personnel Office of such action. Once the reprimand is removed, it shall be destroyed and regarded as never having occurred. Reference may not be made to the withdrawn action as a previous official action, and the reprimand may not be used or relied upon to support a subsequent action. Unless withdrawn earlier, a written reprimand shall be removed from the official personnel folder no later than two years from the date of issuance. A reprimand which is removed from the OPF after two years may be referred to in a subsequent adverse action.
- b. More Severe Disciplinary Actions. The following corrective actions are considered adverse personnel actions and require that the procedures in EPA Order 3110.68, Adverse Actions, be followed. Supervisors must consult with their servicing Personnel office in advance of any proposal to take an adverse action against an employee.
- (1) Suspension. Suspension is placing an employee in an involuntary non-duty and non-pay status. Since suspensions result in a loss of productive capacity to the EPA and represent a financial loss to employees, they should be imposed as disciplinary actions only after admonitions or reprimands have been used without success or when the offense requires a more stringent corrective action.

- (2) Reduction in Grade. While most actions to reduce compensation and most changes to lower grade will not be for the purpose of disciplining employees, a change to lower grade for cause is a valid disciplinary penalty. There may be instances in which the employee's conduct warrants demoting him or her from the position but not removing him or her from the service.
 - (3) Removal. Actions to remove employees from their positions are appropriate when an employee's misconduct, delinquency, carelessness, or negligence are such that a separation from the service must be effected in order to promote the efficiency of the service. Fighting, repeated or prolonged leave abuse, theft, falsification of official documents, repeated infractions involving less severe misconduct, or major violations of Agency codes of conduct are examples of conduct which may require removal from the Federal Service.
- 8. DISCUSSIONS WITH EMPLOYEES. Where a labor organization has been accorded exclusive recognition, it has the right to be represented at formal discussions between supervisors or management officials and employees concerning grievances, personnel policies and practices, or other matters affecting general working conditions of employees in the particular unit of recognition. Individual counseling sessions concerning individual problems, actions or work performance conducted by a supervisor with a unit employee are not formal discussions, and there is no requirement that the union be given the opportunity to be represented. However, if the situation involves questioning that the employee reasonably believes may result in disciplinary action against him or her, the employee may request union representation (5 U.S.C., 7114(a)(2)(B)]. Any questions about meetings with employees and invitations to exclusive union representatives to attend meetings should be discussed with the appropriate servicing personnel office prior to holding such meetings.
- 9. SPECIAL CONSIDERATIONS: ALCOHOL, DRUGS, AND OTHER PERSONAL PROBLEMS. In discussing a conduct or performance problem with an employee, he or she may introduce a problem with alcohol or drugs, or a personal situation which is affecting conduct or performance. In other cases, a supervisor may only suspect the existence of alcohol or drug abuse or a personal problem as the reason for a deficiency. In either of the above situations, supervisors should immediately contact their servicing Personnel Office for guidance and advice on the appropriate steps. In cases of alcohol and drug problems, the Agency is specifically required to offer rehabilitative assistance. Policies and procedures related to the Agency Employee Alcoholism and Drug Abuse Program are contained in EPA Order 3120.3A, dated March 18, 1980.

Howard M. Messner /S/
Assistant Administrator

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for Administration and
Resources Management